

14 February 2013

Hon. E. Thomas Boyle
United States District Court
Eastern District of New York
100 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722

RE: Motion for Leave to Amend Complaint
12-CV-4021 (JFB)(ETB)
Konrad v. Epley et al.

Dear Judge Boyle:

I have reasons, but no excuses, for the error that crept into my original motion for leave to amend the complaint, that is, the reference to the CPLR when in Federal Court. At this time, I submit corrected copy, in the hope that this Court will accept it, particularly in view of the fact that I have not yet received papers from defendants Epley, Robinson and Robinson, and that their papers, contrary to this Court's instructions, appear not to have been e-filed.

The pleadings and documents attached to this letter, in their order, are:

Notice of Motion for Leave to Amend the Complaint
Affidavit in Support of Motion to Amend the Complaint
Memorandum of Law in Support of corrected Motion for Leave to Amend Complaint.

By reference, all the documents filed on 8 February 2013 under Docket No. 49, with the exception of pp. 1-5 and 7 through 10 of the first 11 pages:

Amended Complaint and Exhibits 1-26

Memorandum of Law in Support of Amended Complaint.

I had prepared all papers to be timely filed by my new intern, Joyce Adelugba, if I had been delayed in Europe. Shortly after my return, I faced unexpected circumstances which clearly distracted me from doing error-free work. I apologize to this Court and to the adversaries for the loss of their time.

Respectfully,



Evelyn Konrad
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New York, New York 10028

BY FIRST CLASS MAIL TO: -1-

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EVELYN KONRAD,

Plaintiff

12-CV- 4021 (JFB)(ETB)

NOTICE OF MOTION FOR
LEAVE TO AMEND COMPLAINT

Pursuant to FRCP 1

Plaintiff Requests Trial by Jury

Pursuant to FRCP 38(b)

against-

MARK EPLEY, PAUL ROBINSON, ELBERT W.
ROBINSON JR, WILLIAM BROWN, ELICHIA
BROWN, DENIS GUERIN, DONALD QUINTIN,
and MELINDA QUINTIN,

Plaintiff requests Oral Argument

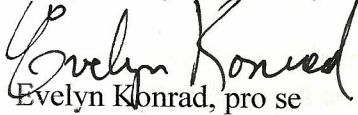
Defendants.
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PLEASE TAKE NOTICE that, upon the Affidavit of Evelyn Konrad dated 14 February 2013, and the documents filed under Docket No. 49, including the proposed Amended Complaint and the 26 exhibits thereto, the accompanying memorandum of law, Plaintiff Evelyn Konrad will move this Court at U.S. Federal Court, Eastern District of New York, at 100 Federal Plaza, Central Islip 11722, on Friday, 8 March 2013, at 9:30 a.m., or e-filed by 9:30 a.m. on 8 March 2013, or as soon thereafter as counsel may be heard, for an order:

1. Allowing Plaintiff to concede that Section 1981, as cited in the original Complaint and pointed out as inappropriate by defendants Quinlins' attorney, was sufficient reason for this motion for an amended complaint.
2. Allowing the substitution of the Amended Complaint with Exhibits 1-26 and the Memorandum of Law efiled under Docket No. 49, for the original complaint filed on 13 August 2012,

DATE: New York, New York
14 February 2012

Respectfully submitted,


Evelyn Konrad, pro se

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EVELYN KONRAD,
Plaintiff

12-CV-04021 (JFB)(ETB)

-against-

MARK EPLEY, PAUL ROBINSON, ELBERT W.
ROBINSON JR., WILLIAM BROWN, ELICHIA
BROWN, DENIS GUERIN, DONALD QUINTIN,
and MELINDA QUINTIN,
Defendants.

AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO
AMEND COMPLAINT
PURSUANT TO FRCP 1 AND
COURT ORDER OF 7 DECEMBER
Plaintiff Requests Trial by Jury
Pursuant to FRCP 38(b)

Plaintiff Requests Oral Argument

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EVELYN KONRAD, an attorney duly licensed to practice before any court of the
State of New York and in the Eastern and Southern District of the U.S. District Court, acting as
Plaintiff pro se in the above-captioned matter, makes this motion, Pursuant to FRCP 1, and in
compliance with the directives from the EDNY Court at the 7 December 2012 pre-motion
conference, for leave to enter the Amended Complaint, its attachments and 26 exhibits and the
accompanying Memorandum of Law, already timely efiled under Docket No. 49. Plaintiff
deposes and states as follows:

1. This motion is timely brought in that it complies with the timing and order of Magistrate Judge E. Thomas Boyle, given at the 7 December 2012 pre-motion conference. (Exhibit 1)
2. This correction of the mistaken reference to State CPLR in the 8 February papers, while correctly referring to FRCP in the request for trial by jury, is being made before all of the answering papers by defendants have been properly served on the Plaintiff.
3. This motion is Plaintiff's first motion for an amended complaint. There is no surprise to any of the defendants from this motion, since Plaintiff had offered the court and the defendants a draft Amended Complaint, to alert them of a forthcoming amended complaint even before the time for serving all the defendants had closed, on 6 December 2012.

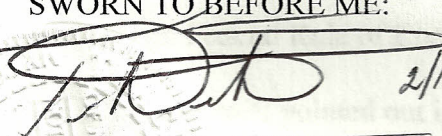
4. The need for this Amended Complaint became apparent from (a) claims of res judicata by defendants, without presentation of any essential decision by a court of competence making a final judgment on any of the allegations and claims asserted in the Amended Complaint; (b) claims of qualified immunity, by the Village policy-maker defendants, showing that they had either not read or did not know tht immunity, qualified or other, is never awarded when the allegations and claims asserted against them are (I) breaking New York State law; (ii) breaking the Village's own laws, ordinances, rules; (c) claims of preclusion of issues which have never been decided by any court, nor alleged against any of the current defendants.

5. Plaintiff has not yet served Elichia Brown, but is awaiting leave from this Court in answer to Plaintiff's motion to add as a defendant Elichia Brown, not only because she co-owns the house and property at 17 Adams Lane, Rosko Place subdivision, Village of Southampton, with her husband, defendant William Brown, but also because her signature appears on an allegedly fraudulent letter sent by her and by William Brown to the ARB, claiming that the property of defendant Denis Guerin at 7 South Rosko Drive, and a whole section of the approved Rosko Place subdivision is not in that subdivision. (Exhibit 12 attached to the Amended Complaint.)

6. There is no prejudice against any of the named defendants since they appeared at the 7 December 2012 pre-motion conference and did not even have leave to file a motion to dismiss Plaintiff's Complaint or Amended Complaint until the conclusion of that conference. (Exhibit 1)

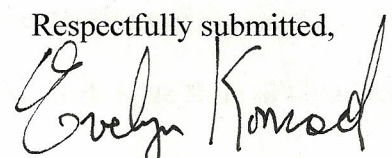
DATE: New York, New York
14 February 2013

SWORN TO BEFORE ME:

 2/14/13

TRACI WEEKS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01WE6269274
Qualified in Queens County
Commission Expires 09/24/2016

Respectfully submitted,


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EVELYN KONRAD,

Plaintiff

12-CV- 4021 (JFB)(ETB)

MEMORANDUM OF LAW
IN SUPPORT OF
MOTION FOR LEAVE TO
AMEND COMPLAINT
Pursuant to FRCP 1 and Pursuant to
the Order of 7 December 2012 by
Magistrate Judge Boyle.
Plaintiff Requests Trial by Jury
Pursuant to FRCP 38(b)

-against-

MARK EPLEY, PAUL ROBINSON, ELBERT W.
ROBINSON JR, WILLIAM BROWN, ELICHIA
BROWN, DENIS GUERIN, DONALD QUINTIN,
and MELINDA QUINTIN,

Defendants.

Plaintiff requests Oral Argument

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The modern view is that cases should be decided on their merits rather than on mere technicalities. *Rupert v. Metro-North Commuter RR.*, 1996 WL 4-47535 (SDNY) Indeed, both the Southern and the Eastern District Courts have led the way in substituting the search for justice for strict adherence the procedural requirements that do not impact on the merits of a case.

One example of such liberalizing of Court standards is the implementation of the new CPLR 306 (b), which allows judges to grant liberal extensions of the time for service of process, after the time for such service has passed. This New York State Rule of Civil Practice was modeled on Federal Rule of Civil Procedure 4 (m).

As Plaintiff pointed out in her Affidavit in Support of the Motion for Leave to Amend, there is no prejudice to the other side, because Plaintiff has been prompt in following the Court's schedule provided at the 7 December 2012 pre-motion conference. Furthermore, according to case law "mere lateness is not a barrier to amendment, but it will preclude amendment if it is

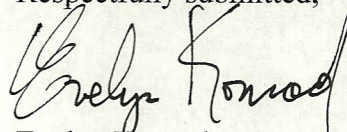
coupled with significant prejudice to the other side.” *Worthen-Caldwell v. Special Touch Home Care Service, Inc.*, 78 AD 3d at 822. In addition, Plaintiff has not yet been served with the Motion to Dismiss from defendants Epley, Robinson, and Robinson, which appears not to have been efiled, since it is not on the Docket, and was apparently mailed to Plaintiff while Plaintiff was in New York City, to avoid the snow blizzard announced for Suffolk County.

Plaintiff’s Notice of Motion and Affidavit’s reference to the CPLR rather than the relevant FRCP may be mitigated by the fact that Plaintiff showed awareness of the EDNY’s jurisdiction in referring to her request for Jury Trial referring to the appropriate Federal Rule for that request. Furthermore, Plaintiff’s documents clearly state that her Motion for Leave to Amend her Complaint is made in compliance with Magistrate Judge Boyle’s order following the 7 December 2012 pre-motion conference in EDNY, thus verbally recognizing this Court’s jurisdiction in the same documents.

In order to avoid redundancy, this Motion for Leave to Amend the Complaint is followed, by reference, by Docket No. 49, excluding pages 1-5 and 7-10 in the first 11 pages of that submission.

DATE: New York, New York
14 February 2013

Respectfully submitted,



Evelyn Konrad
Pro se Plaintiff
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